

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

* * *

MICHAEL F. FEDERICO DPM,

Plaintiff,

V.

UNITED STATES DEPARTMENT OF
VETERANS' AFFAIRS, DOES 1-10 and
ROE CORPORATIONS 1-X, inclusive.

Defendants.

Case No. 2:15-cv-02253-APG-VCF

ORDER

(ECF No. 5)

11 Plaintiff Michael Federico filed this lawsuit under the Federal Tort Claims Act (“FTCA”)
12 asserting two causes of action: breach of a written settlement agreement and negligence. The
13 FTCA does not apply to actions for interference with contract rights. 28 U.S.C. § 2680(h).
14 Rather, claims for breach of contract are governed by the Tucker Act, 28 U.S.C. § 1491(a)(1).
15 The Court of Federal Claims has exclusive jurisdiction over contract claims seeking in excess of
16 \$10,000. *Id.*; 28 U.S.C. §§ 1346(a)(2), 1491(a)(1). Thus, Federico’s contract claim must be
17 dismissed because this court has no jurisdiction over it.

18 Similarly, this court lacks subject matter jurisdiction over Federico's negligence claim
19 because he has not exhausted his administrative remedies. Federico filed an administrative claim
20 for compensation in connection with a prior settlement agreement. (ECF No. 6 at 2-3.) However,
21 the administrative claim made no reference to a negligence cause of action. An administrative
22 claim must state a general description of the nature of the injury sufficient to enable the agency to
23 begin an investigation and a sum certain amount of damages. *Warren v. United States Dept. of*
24 *Interior*, 724 F.2d 776 (9th Cir. 1984); *Goodman v. United States*, 298 F.3d 1048 (9th Cir. 2002).
25 Because Federico's administrative claim focused on the alleged breach of the settlement
26 agreement, the agency was not put on notice of his negligence claim. Nor did Federico's claim

1 demand a sum certain. ECF No. 6-4, 6-5. Because Federico did not exhaust his administrative
2 remedies regarding his negligence claim, this court lacks jurisdiction to consider it.

3 Federico contends his administrative claim sufficiently put the agency on notice because it
4 contained a description of his injury. But Federico cannot have it both ways. To the extent he
5 notified the agency of his claim for breach of the settlement agreement, that claim is exhausted
6 but barred in this court by the Tucker Act. To the extent he contends his injury is the result of
7 negligent acts, that claim was not sufficiently presented to the agency and thus is unexhausted.
8 Thus, this court does not have jurisdiction over Federico's complaint.¹

9 IT IS ORDERED that the United States' motion (**ECF No. 5**) is **GRANTED** and this case
10 is DISMISSED WITHOUT PREJUDICE.

11 DATED this 6th day of June, 2016.



13 ANDREW P. GORDON
14 UNITED STATES DISTRICT JUDGE
15
16
17
18
19
20
21
22
23
24
25
26
27
28

¹ Based on this conclusion, I need not reach the United States' argument that Federico's negligence claim is also barred by the "economic loss rule."